

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:16-cr-00166-MOC-DSC

UNITED STATES OF AMERICA,

Vs.

AMUR MASHUG EL,

Defendant.

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ORDER

THIS MATTER is before the Court on the court's Motion for Psychiatric Evaluation. After conducting a hearing, the Court will direct that defendant be taken into custody and that, at government expense, a psychiatric evaluation be performed to determine whether he is competent to stand trial, 18 U.S.C. § 4241, whether he was sane at the time of the alleged offense, 18 U.S.C. § 4242 and Rule 12.2 of the Federal Rules of Criminal Procedure, and, if so, whether he is in need of treatment, 18 U.S.C. § 4244(a).

ORDER

IT IS, THEREFORE, ORDERED that the court's Motion for Psychiatric Evaluation is **GRANTED**, and

(1) **THE DEFENDANT** shall be examined by at least one qualified psychiatrist or psychologist pursuant to 18, United States Code, Section 4241(b) and Rule 12.2, Federal Rules of Criminal Procedure, to determine if the defendant, AMUR MASHUG EL, is presently insane or otherwise so mentally incompetent as to be unable to understand the criminal proceedings against him or to properly assist in his defense.

(2) **THE DEFENDANT**, AMUR MASHUG EL, shall be examined to determine whether at the time of the commission of the alleged offense AMUR MASHUG EL was criminally responsible pursuant to 18, United States Code, Section 4242.

(3) **FOR PURPOSES OF EXAMINATION** pursuant to Section 4241(b), defendant is committed to the custody and care of the Attorney General for placement in a suitable facility, and the examination shall be for such a reasonable time, not to exceed forty-five (45) days, as is necessary to make evaluations as to whether AMUR MASHUG EL:

(a) is presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or to properly assist in his own defense; and

(b) was, at the time of the commission of the alleged offense, criminally responsible.
18 U.S.C. §§ 4241(b) and 4247(b) and (c).

For purposes of determining the forty-five (45) day period, the examination is deemed to commence on the day defendant is admitted to the mental health facility.

(4) **THE WARDEN OR THE CASE MANAGER** of the designated facility is instructed that requests for extension of the 45-day examination period must be in a writing mailed to the Clerk of this court, with copies sent to defendant's counsel, the United States Attorney, and the United States Marshal.

(5) **THE PSYCHIATRIST OR PSYCHOLOGIST**, as designated by the Attorney General to examine defendant, shall prepare a psychiatric or psychological report pursuant to the requirements of 18, United States Code, Section 4247(c).

(6) **THE PSYCHIATRIST OR PSYCHOLOGIST**, as designated by the Attorney General, shall forward the original report to this court, **a copy to the Clerk of this court**, a copy to counsel for AMUR MASHUG EL, and a copy to the United States Attorney.

(7) **THE UNITED STATES MARSHAL**, shall transport defendant AMUR MASHUG EL to the mental health institution, which shall be designated by the Attorney General, and return defendant AMUR MASHUG EL immediately upon completion of the examination to the Western District of North Carolina where bond, if any, may resume. **The United States Marshal is permitted a total of 14 days within which to transport AMUR MASHUG EL to and from the mental health institution.** Upon return to the district, defendant shall be brought before a United States Magistrate Judge for purposes of conducting a competency evaluation and then determining whether defendant may be returned to the previous bond.

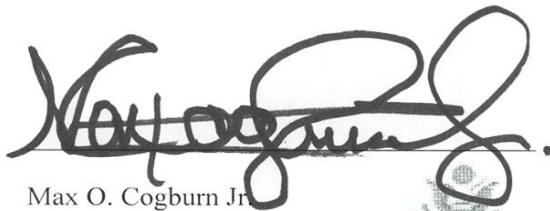
(8) **THE UNITED STATES MARSHAL** shall provide defendant with medications, if any, as prescribed by a licensed physician pending and during transportation to the mental health institution designated by the Attorney General.

(9) **COUNSEL FOR DEFENDANT** is instructed that in the event psychiatrists or psychologists employed by the government determine that defendant is competent to stand trial, counsel for defendant may promptly, thereafter, file a motion for appointment and examination by independent experts. Such a motion must be accompanied by an affidavit of counsel describing the "pronounced irrational behavior" of defendant such attorney has observed, Pate v. Robinson, 383 U.S. 375, 385-86 (1966), averring and documenting that defendant has not been able to "consult with his lawyer with a reasonable degree of rational understanding," and showing that it is counsel's belief that defendant does not have a "rational as well as factual understanding of the proceedings against him." Penry v. Lynaugh, 492 U.S. 302, 333 (1989). The filing of such a motion will not be cause for continuance from a trial calendar and motions which are not filed in good faith may result in the imposition of sanctions.

(10) In the event mental health professionals at the designated federal facility determine that defendant is presently insane or not competent to stand trial and that defendant was not criminally responsible at the time of the alleged offense, the **PSYCHIATRIST OR PSYCHOLOGIST** at the designated facility shall conduct such further tests as may be appropriate to determine whether defendant's release into the community would create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. 18 U.S.C. Sect. 4243(e). The results of such testing and the conclusions drawn therefrom should be appended to and sent along with the psychological report.

THE CLERK OF COURT is directed to send copies of this Order to counsel for defendant, the United States Attorney, the United States Marshal, and the designated mental health facility also in the care of the United States Marshal.

Signed: March 19, 2018



Max O. Cogburn Jr.
United States District Judge